

**GOVERNMENT OF ANDHRA PRADESH  
ABSTRACT**

Amendments proposed for deletion of alternate fuel clause in the Power Purchase Agreements of 4 (four) Independent Power Producers (IPPs) viz., 220 MW GVK Industries Limited, 370 MW Vemagiri Power Generation Limited, 445 MW Konaseema EPS Oakwell Power Limited and 464 MW Gautami Power Private Limited – Directions U/S 108 of 'The Electricity Act – 2003' – Issued.

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**ENERGY (POWER.I) DEPARTMENT**

G.O.Rt.No.135

Dated:13.10.2009.

Read the following:-

1. G.O.Ms.No.18, Energy (Pr.I) Dept., dt.25.2.2006
2. Govt.Lr.No.6641/Power.I(1)/1996, 20.5.2008.
3. Govt.Lr.No.6641/Power.I(1)/1996, 20.5.2008.
4. Govt.Lr.No.6160/Power.I(1)/2001, 01.10.2008.
5. Govt.Lr.No.5401/Power.I(1)/2008-7, 06.11.2008.
6. From the Jt. Managing Director, APTRANSCO, Lr.No.JMD/  
APTRANSCO/CE/IPC/112/F.Amdts/D.No.67/09, dt.3.7.09.

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**ORDER**

As per the New Energy Policy (NEP) of Government of India, private sector was allowed entry into power generation. Four (4) developers with as many gas based projects entered into Power Purchase Agreement (PPA) with the erstwhile APSEB during May/June 2003. It was done after public hearing and receiving due consent from APERC in April, 2003. The projects are as follows:

- i) 370 MW Project by M/s Vemagiri Power Generation Limited
- ii) 464 MW Project by Gautami Power Private Limited
- iii) 445 MW Project by Konaseema EPS Oakwell Power Limited
- iv) 220 MW Extension Project by M/s GVK Industries Limited.

2. These 4 power projects were conceived by as many entrepreneurs in our state. The decision to establish gas based power projects in K-G Basin was obviously dictated by the expectation of adequate gas availability in the proximate territory. Work on these projects commenced during 2003 and all of them were ready to produce power by 2005-2006. Power Purchase Agreements (PPAs) with APSEB had already been entered during May / June, 2003. However, the availability of gas, in K-G basin, as in other basins all over the world is highly uncertain. From 2006 all the way upto 2009, for a long period of three years and more, all the power projects were fully erected yet not able to generate a single unit due to lack of availability of gas. This was causing enormous loss to the entrepreneurs in terms of interest, depreciation and manpower

expenditure required to maintain the plant. On the other hand, it was causing enormous loss of opportunity to the people of Andhra Pradesh because the promised power as per the provisions of PPA could not be made available to them. In fact, it was a Loss-Loss situation for both, public as well as private parties.

3. Government of A.P. have always been striving to provide adequate, reliable and uninterrupted power supply to all categories of consumers in our state at affordable rates. With this objective in view, a Committee was constituted in February, 2006 to deliberate upon various issues like sectoral reforms, operational issues like supply of gas and coal to the power projects, pricing of fuels, financial implications on the utilities and several technical and legal issues. Advocate General was on the Committee for his constant guidance. The Committee's mandate was to hold consultations with all the stake holders by examining the issues in totality before furnishing its recommendations to the government.

4. During the year 2007, M/s G.V.K. Extension and M/s Gautami Power Limited approached APPCC and requested to permit them to sell 20% of PPA capacity plus any tested capacity over and above the PPA capacity to third parties to enable them to recover the losses incurred by them due to non availability of natural gas by agreeing for deletion of alternate fuel provisions in the PPA dt.18.6.2003. The APPCC has recommended the above requests for placing before the Committee.

5. Accordingly, the matter was placed before the Committee for their recommendations. Based on the recommendation of the Committee, the Govt. have conveyed the approval for the amendments to PPA and requested the APPCC to take necessary action in the references 2<sup>nd</sup> and 3<sup>rd</sup> read above.

6. Similar requests were made by M/s Konaseema EPS Oakwell Power Ltd. and M/s Vemagiri Power Generation Ltd. and the said requests were also recommended by APPCC to Govt. for placing before the Committee for consideration. Basing on the recommendation of the Committee, the Govt. have conveyed the approval for the amendments to PPAs and requested APPCC to take necessary in the references 4<sup>th</sup> and 5<sup>th</sup> read above.

7. Accordingly, the proposed amendments were placed before the APERC by the APTRANSCO/APPCC for their consent in the matter.

8. The Joint Managing Director, APTRANSCO has informed, in the letter 6<sup>th</sup> read above among other things, that during the course of hearings, objectors raised the following points before the APERC:

- (i) IPPs losses are not based on facts and in-fact DISCOMs also suffered loss for not getting the power during the said period.
- (ii) The intention of GoAP as contained in GoAP letter also has not been correctly brought out in the proposed amendments.
- (iii) As of now DISCOMS are purchasing power at higher price, due to paucity of power and therefore power should not be given away to third parties.

9. On the above, the Hon'ble APERC has made the following observations:

- (i) That the loss suffered by the IPPs due to non-availability of gas from the date of deemed COD upto April, 2009 should be commensurate with the benefits given in the model of proposed amendment.
- (ii) To provide truing up mechanism to check, upto what extent of period the benefit of 20% need to be given, if period is fixed and the loss is not met, then to increase the period.
- (i) How, the DISCOMs are going to meet the shortage of capacity that would occur by giving 20% to companies.

10. The JMD has now requested the Government to give directions on the following points:

- I. Whether the proposed amendments of 80% capacity to DISCOMs and 20% capacity to company at Article 2.1 of PPA, at all scenarios, excepting in the case of short supply of gas, reflects unambiguously the direction of the Government.
- II. Whether to incorporate truing up mechanism into proposed amendments to check the recovery of losses by the Commission, and get back to 100% capacity to DISCOMs after full recovery of losses.
- III. Whether DISCOMs should buy the 20% power under short term purchase agreement in Light of present demand supply situation.
- IV. Whether DISCOMs should buy the 20% power under case-II bidding process in accordance with GoI policy on long term basis in Light of present demand supply situation.

11. Government respects and holds the observations of Hon'ble APERC in the highest esteem. At the same time, it is prudent to remember that all these gas based power projects had been erected as far back as during 2005-2006. Committee's decision emerged after long deliberations conducted during multiple meetings spread over 24 months. The PPAs have been revised with no financial burden to the state exchequer. Revised PPAs have, in fact converted the uncertain availability of gas situation into a certain availability of power for the people of Andhra Pradesh for 15 years to come. As mandated, the Committee held consultations with all stake holders by examining the issues in totality before furnishing its recommendations. Government of A.P. reiterates and fully endorses Committee's recommendations – Yet again. In view of the clear cut recommendations of the Committee constituted during February, 2006 and other material made available by JMD, APTRANSCO, the Government of A.P. issues following direction Under Section 108 of 'The Electricity Act, 2003'.

**11. (1) Point No. I**

**"Whether the proposed amendments of 80% capacity to DISCOMS and 20% capacity to company at Article 2.1 of PPA, at all scenarios, excepting in the case of short supply of**

**gas, reflects unambiguously the direction of the Government"**

**Direction**

The proposed amendment to allocate 80% capacity to DISCOMs and 20% capacity to companies at Article 2.1 of Power Projects Agreement (PPA) reflects clearly and unambiguously the direction of the government. For avoidance of any further doubt, illustrations are given below:

(a) **Situation No.1 – Gas supply is normal**

For the sake of simplicity, it is assumed that the capacity of power plant is 100MW. If gas supply is normal, it is expected to generate 100MW. First entitlement of DISCOMs shall be 80 MW. Balance 20 MW would be available to Company to sell to 3<sup>rd</sup> party.

(b) **Situation No. 2 – Gas supply is low**

Suppose the same 100 MW capacity station is generating only 90 MW due to short supply of gas, the Company shall make first availability up to 80 MW (calculated at 29 Deg. C 70% RH and 50 Hz grid frequency) to DISCOMs. Thereafter, the balance 10MW shall be available to Company for 3<sup>rd</sup> party sale.

(c) **Situation No. 3 – Gas supply is lower still**

Suppose 100 MW Power Plant generates only 80 MW due to shortage of gas supply. This situation is likely to be rare. However, as per the decision of the Committee, all the 80MW capacity shall be the entitlement of DISCOMs. In this extreme situation, the company would not have any capacity for 3<sup>rd</sup> party sale.

(d) **Situation No. 4 – Gas supply is abysmally low**

Suppose 100 MW power plant generates only 60 MW power due to abysmally low supply of gas. This situation is going to be rarest of rare. However, as per the decision of the Committee, entire 60 MW capacity shall go to DISCOMs only. Hence, the company would not have any capacity whatsoever for 3<sup>rd</sup> party sale.

(e) **Situation No. 5 – Failure of Turbine or equipment**

Suppose 100 MW capacity of the plant is generating 90 MW due to outage of gas turbine or failure of any auxiliary equipment. The Committee's decision in such a situation is absolutely clear. Firstly, 80% of 90 MW, i.e., 72 MW capacity shall be the entitlement of DISCOMs. The balance 20%, i.e., 18 MW capacity shall be available to the Company for 3<sup>rd</sup> party sale.

(f) **Situation No. 6 – Tested capacity is more**

Suppose PPA capacity is 100 MW. And tested capacity is 110 MW. In that situation Committee have decided that firstly 80 MW will be made available to DISCOMs. The balance 30 MW may be sold by the company to 3<sup>rd</sup> parties.

It is further clarified that all these **amended PPAs will be valid for 15 years only.**

#### **11.2 Point No. II**

**“Whether to incorporate truing up mechanism into proposed amendments to check the recovery of losses by the Commission, and get back to 100% capacity to DISCOMs after full recovery of losses.”**

##### **Direction**

The issue of losses incurred by DISCOMs as well as companies has repeatedly cropped up during several Committee’s deliberations. Overall objective was to make maximum power available to DISCOMS so as to distribute the same amongst millions of consumers in A.P. Various related factors like change of fuel from naptha to gas, then considerable delay in gas availability due to the delay in production of gas in KG basin, thereby inflicting huge losses upon each one of these companies, and ensuring availability of assured power in future in case of possible reduction of gas supply were also discussed. GOAP is also of the firm opinion that its clear cut policy need not be tested on the anvil of micro mathematics of various claims and losses. As mandated, the Committee held consultations with all stake holders by examining issues in totality before furnishing its recommendations to the Government.

Keeping that in view, it is directed that incorporating truing up mechanism into the proposed amendment is not necessary at all.

#### **11.3 Point No. III**

**“Whether DISCOMS should buy the 20% power under short term purchase agreement in light of present demand supply situation”**

##### **Direction**

Demand for power at a particular juncture is a composite result of multiple factors. Some factors are certain like generation capacity of thermal and gas based power stations in Andhra Pradesh. However, certain other factors like rainfall deficit which in turn determines the generation of hydroelectric power are totally uncertain. A.P. state is undergoing the spell of uncertain rainfall for quite some time. Therefore, the decision to buy quantum of power and its tariff is best left to the pragmatic, wise and contemporary decision of these public utilities. During the long history of erstwhile APSEB, the agency has got a very rich reputation and there is no need to burden them by directing DISCOMs to buy only a certain fixed percentage of power under the short term purchase agreement.

#### **11.4 Point No.IV –**

**“Whether DISCOMs should buy the 20% power under case-II bidding process in accordance with GOI policy on long term basis in light of present demand supply situation”**

**Direction**

The quantum of power purchased under case-II bidding process in accordance with GOI policy is being implemented by the DISCOMS keeping in view the demand and supply of energy, needed during a particular period. Therefore, the need to purchase a certain percentage is not necessary.

12. These specific directions are given under Section 108 of 'The Electricity Act 2003'. GOAP expects an expeditious and appropriate follow up action in the matter. That would surely help to provide adequate, reliable and uninterrupted power supply to all categories of consumers at affordable rates. This is precisely the avowed policy of the GoAP reiterated from time to time including G.O.Ms.No. 18, Energy (Pr.I) Department dated 25.02.2006.

(BY ORDER AND IN THE NAME OF GOVERNOR OF ANDHRA PRADESH)

**A.K.GOEL**  
**SPECIAL CHIEF SECRETARY TO GOVERNMENT**

To

The CMD, APTRANSCO  
M.D, APGENCO  
The Chairman, APERC  
The Advocate General, A.P, Hyderabad  
All DISCOMs  
M/s Vemagiri Power Generation Ltd,  
M/s Gautami Power Private Limited  
M/s Konaseema EPS Oakwell Power Limited  
M/s GVK Industries Ltd  
All Secretaries/Prl. Secretaries /Spl. Chief Secretaries to Govt.

**Copy to**

P.S. to Prl. Secretary to C.M.  
P.S. to C.S.

//forwarded by order//

Section Officer